

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2103-2022 (O&M)
Date of decision : 31.05.2023

Madan Gopal Sharma ... Petitioner(s)

Versus

Gurcharan Singh ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.S. Dadwal, Advocate for the petitioner.

Mr. Ajay Kumar, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 23.05.2017 whereby the defence of the defendant-petitioner has been struck off.
2. Learned counsel for the defendant-petitioner would contend that the written statement could not be filed as the defendant-petitioner was bedridden due to a paralytic attack since February 2017 and despite repeated attempts the defendant-petitioner could not be contacted by the counsel. He would further contend that the delay in challenging the impugned order also was occasioned due to the fact that the defendant-petitioner remained bedridden because of the paralytic attack.

3. *Per contra*, learned counsel for the plaintiff-respondent has contended that despite six opportunities, the written statement was not filed and hence the Trial Court order cannot be faulted with.

4. Heard.

5. Hon'ble Supreme Court in the case of **Desh Raj vs. Balkishan (D)** through proposed LR Ms. Rohini [2020 (1) RCR (Civil) 807] has held as under :

“ANALYSIS & CONCLUSION

11. At the outset, it must be noted that the Commercial Courts Act, 2015 through Section 16 has amended the CPC in its application to commercial disputes to provide as follows:

“16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes - (1)
The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a

commercial dispute of a specified value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908, by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.”

12. Hence, it is clear that post coming into force of the aforesaid Act, there are two regimes of civil procedure. Whereas commercial disputes [as defined under Section 2(c) of the Commercial Courts Act, 2015] are governed by the CPC as amended by Section 16 of the said Act; all other noncommercial disputes fall within the ambit of the unamended (or original) provisions of CPC.

13. The judgment of Oku Tech (supra) relied upon the learned Single Judge is no doubt good law, as recently upheld by this Court in SCG Contracts India Pvt. Ltd. v. KS Chamankar Infrastructure Pvt. Ltd., AIR 2019 SC 2691, but its ratio concerning the mandatory nature of the timeline prescribed for filing of written statement and the lack of discretion with Courts to condone any delay is applicable only to commercial disputes, as the

judgment was undoubtedly rendered in the context of a commercial dispute qua the amended Order VIII Rule 1 CPC.

14. As regard the timeline for filing of written statement in a non-commercial dispute, the observations of this Court in a catena of decisions, most recently in Atcom Technologies Ltd. v. Y.A. Chunawala and Co., (2018) 6 SCC 639 holds the field. Unamended Order VIII Rule I, CPC continues to be directory and does not do away with the inherent discretion of Courts to condone certain delays.”

6. Thereafter in the case of **Bharat Kalra Vs. Raj Kishan Chabra [2022 SCC OnLine SC 613]** the Apex Court has held as under :

“3. Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Court Act, 2015. Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as 'Kailash v. Nankhu & Ors.' reported in (2005) 4 SCC 480.

4. In view of the aforesaid judgment, we find that the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable.

5. *Consequently, we allow the present appeal. The order passed by the High Court is set aside. The written statement already filed is taken on record.”*

7. In the present case, the defendant-petitioner suffered a paralytic attack some time in February 2017 and remained bedridden. As per the averments made in the present revision petition, the defendant-petitioner is still confined to bed and in view of his medical condition the written statement could not be filed in time. Keeping in view the settled law that the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 in the case of non-commercial suits are only directory in nature and not mandatory, this Court deems it appropriate, in order to do complete justice between the parties, to set aside the impugned order dated 23.05.2017. The defendant-petitioner is permitted to file his written statement on or before the next date of hearing before the Court below.

8. The present revision petition is allowed in the above terms. Pending applications, if any, also stand disposed off.

31.05.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO